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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 HARVEY EUGENE LARSON,
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Petitioner,
v.
WARDEN STEW SHERMAN, Warden,
Respondent.

Case No.: 16-1038 GPC (MDD)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Harvey Eugene Larson, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis. The Court does not rule on Petitioner's request to proceed in forma pauperis because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his conviction in San Diego Superior Court case No. SCE195230. On July 7, 2009, Petitioner filed in this Court a First Amended Petition for Writ of Habeas Corpus in case No. 09cv0745 L (PCL). In that petition, Petitioner challenged his conviction in San Diego Superior Court case No. SCE195230 as well. On February 25, 2011, this Court granted a motion to dismiss the petition as time barred.

(See Order filed Feb. 25, 2011 in case No. 09cv0745 L (PCL) [Doc. No. 51].) Petitioner appealed that determination. On August 23, 2012, the Ninth Circuit Court of Appeals denied a Certificate of Appealability. (See Order in *Larson v. Attorney General*, No. 11-55606 (9th Cir. Aug. 23, 2012).)

Petitioner again challenged his conviction in San Diego County Superior Court case no. SCE195230 in this Court in case No. 14cv2083 JAH (JMA). That case was dismissed as successive on September 20, 2014 pursuant. (See Order filed September 10, 2014 in case No. 14cv2083 JAH (JMA) [Doc. No. 3].)

Petitioner is now seeking to challenge the same conviction he challenged in his prior federal habeas petitions. Unless a petitioner shows he or she has obtained an Order from the appropriate court of appeals authorizing the district court to consider a successive petition, the petition may not be filed in the district court. See 28 U.S.C. § 2244(b)(3)(A); *McNabb v. Yates*, 576 F.3d 1028, 1030 (9th Cir. 2009) (holding that dismissal for failure to comply with one-year statute of limitations renders subsequent petitions challenging the same conviction or sentence “second or successive” under 2244(b)). Here, there is no indication the Ninth Circuit Court of Appeals has granted Petitioner leave to file a successive petition.

CONCLUSION

Because there is no indication Petitioner has obtained permission from the Ninth Circuit Court of Appeals to file a successive petition, this Court cannot consider his Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner filing a petition in this court if he obtains the necessary order from the Ninth Circuit Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application*

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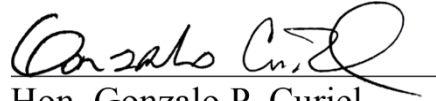
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1 *for Leave to File a Second or Successive Petition Under 28 U.S.C. § 2254 together with*
2 *a copy of this Order.*

3 **IT IS SO ORDERED.**

4 Dated: May 11, 2016

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6 Hon. Gonzalo P. Curiel
7 United States District Judge
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